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COMMONWEALTH EDISON COMPANY)
) No. 00-0361
Petition for Approval of a Revision to)
Decommissioning Expense Adjustment Rider to)
Take Effect on Transfer of ComEd's Generating)
Stations)

**PEOPLE OF THE STATE OF ILLINOIS AND CITIZENS UTILITY BOARD'S
RESPONSE TO COOK COUNTY'S MOTION TO DISMISS AND/OR CONSOLIDATE**

The People of the State of Illinois, by James E. Ryan, Attorney General of the State of Illinois ("the People") and the Citizens Utility Board ("CUB"), pursuant to the Rules of Practice of the Illinois Commerce Commission, 83 Ill. Adm. Code, Section 200.190, respond to Cook County's Motion to Dismiss and/or Consolidate in the above captioned proceeding. The People request the Commission grant consolidation for the following reasons.

1. **The Commission, pursuant to Section 200.600 of the Rules of Practice of the Illinois Commerce Commission, should grant Cook County's motion to consolidate ICC Docket No. 00-0361 with the two pending Rider 31 proceedings, ICC Docket No. 99-0115 and ICC Docket 00-0191.**

Section 200.600 allows the Commission or Hearing Examiner to order the consolidation of two or more proceedings which involve a similar question of law or fact where the rights of the parties or the public interest will not be prejudiced by such procedure. 83 Ill. Adm. Code 200.600.

2. All three dockets contain the same question of fact regarding the current decommissioning rate.

ComEd maintains that the Commission should rely upon the same cost studies in the 00-0191 and 00-0361 dockets as ComEd originally submitted in the 99-0115 Rider 31 docket. Within the 99-0115 docket, ComEd's position and accompanying cost studies have been subject to discovery and cross-examination by that docket's parties, and relevant countervailing evidence has been introduced into the docket record. In the year 2000 Rider 31 proceeding, ICC Docket 00-0191, ComEd has requested the Commission adopt the findings of the 99-0115 docket, even though a final order has not yet been issued in that docket. In the instant docket, ComEd has again adopted the same cost studies prepared for these prior Rider 31 proceedings as evidence to support their claim for decommissioning costs in this proceeding.¹ ComEd Ex. 1 at 8.

ComEd witness Speck stated in his pre-filed direct testimony in this case that "[T]he Commission and intervenors must devote significant resources to determine appropriate decommissioning collections." Direct testimony of Randall L. Speck, Edison Ex. 4, Docket 00-0361. Consolidating the instant docket with other pending Rider 31 dockets will conserve those resources and significantly advance the Commission's ability to fully determine the appropriate level of decommissioning collection in all three dockets. While there are additional issues to be addressed in this docket,² it is fundamental that the Commission establish the appropriate level of decommissioning costs. To that end, consolidation of these three dockets serves the interests of judicial economy. See Sianis v. Kettler, 523 N.E.2d 157, 168 Ill. App. 3d 1071 (1988).

¹ComEd explicitly states that this docket is a "revised Rider 31" proceeding. Petition at 1.

²Some of such additional issues will be more efficiently addressed in a single docket with a single evidentiary record and a single fount of discovery.

All of the issues in this docket are integral to the ultimate Commission decision regarding the decommission charges that may be collected. The Commission must consider the cost of decommissioning as well as the issues unique to the ComEd's new proposal to recover those costs. ComEd's petition in ICC Docket No. 00-0361 requires the Commission to determine whether it has the authority to order refunds of any unused portions of the decommissioning trusts and when decommissioning collections should ultimately be cut-off. These issues are intermeshed with the Commission's determination of the appropriate level of decommissioning costs, and should be addressed contemporaneously. The issues of decommissioning cost and recovery of that cost cannot be considered separately. Indeed, regardless of whether these dockets are consolidated in some form or not, as a function of determining the decommissioning charges that ComEd may collect under its new proposal, the Commission will have to determine the appropriate level of decommissioning costs to be recovered. By consolidating these dockets the level of decommissioning costs will be addressed by the record in ICC Docket No. 99-0115, and the parties will also be able to address the unique issues of ICC Docket No. 00-0361. Therefore, the People and CUB request the Commission, pursuant to Section 200.600, grant consolidation of ICC Dockets 99-0115 and 00-0191 with ICC Docket No. 00-0361. 83 Ill. Adm. Code 200.600.

3. Neither the parties to this docket nor the public interest will be prejudiced by consolidating these three dockets.

The evidentiary record and discovery materials already collected in Docket No. 99-0115 will both provide the instant docket with an evidentiary and analytical head start and allow a more thorough analysis of the remaining facts and issues within the constrained schedule of this

case.

Consolidation of dockets will not prejudice the public interest. Indeed, the opposite is true. If these dockets are not consolidated the public interest may be prejudiced. ComEd witness Robert E. Berdelle stated in his pre-filed testimony that “[i]n the event the [the 00-0361] Petition is granted, and the merger and transfer of assets to the Genco take place, ComEd will withdraw its Petitions filed in both the 1999 and the 2000 decommissioning cases.” There are several unresolved questions, fundamental to determining the actual decommissioning charges that ComEd may collect for its nuclear fleet, bound up in the 1999 Rider 31 docket, which may not be addressed if these dockets are not consolidated.³ Failure to consolidate these dockets may delay or ultimately frustrate the ultimate reconciliation of these issues, thereby prejudicing the public interest in securing just and reasonable decommissioning rates for all electricity consumers. It is only through consolidation that the public interest is served by ensuring a full analysis of all of the issues in this case and the overdue resolution of the 1999 Rider 31 action.

None of ComEd’s rights are prejudiced by consolidating these dockets. Indeed, ComEd’s expressed interest in receiving an expedited ruling in this docket is served by the addition of Docket No. 99-0115’s developed evidentiary record and discovery material, which will allow the Commission to address this revised Rider 31 proposal in less time than traditionally required in other Rider 31 dockets.⁴ Therefore, the People and CUB request the Commission, pursuant to Section 200.600, to grant consolidation of ICC Dockets 99-0115 and 00-0191 with ICC Docket

³The unresolved issues include whether ComEd can collect decommissioning charges for the closed Zion plant, and the actual decommissioning rates that should be charged for the year 1999 and 2000. Both of these issues involve decommissioning costs that are currently being collected without a declaration that such collections are just and reasonable.

⁴Docket No. 99-0115 has been open for over a year.

- 4. Even if the Commission chooses not to fully consolidate Dockets 99-0115 and 00-0191 with the instant docket, the Commission should consolidate the dockets for the purpose of allowing all discovery collected and evidence introduced in all three dockets to be entered into the instant docket's record.**


By introducing the cost studies, ComEd has effectively reintroduced the same evidence it originally introduced in Docket 99-0115. To allow ComEd to introduce the same cost studies into this docket as are being used in the 1999 Rider 31 docket, without also allowing all discovery and countervailing evidence introduced in that docket, ignores the short schedule of this docket in comparison to other Rider 31 dockets.

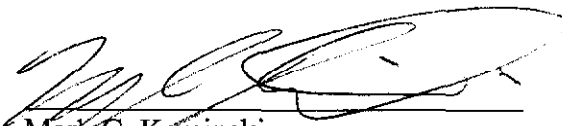
This forces all parties to relitigate the entire decommissioning cost issue, which has already been addressed using the same cost study in ICC Docket No. 99-0115, along with other issues regarding the Exelon-Genco transfer, all within a substantially shorter schedule. To allow ComEd to submit the same evidence as in ICC Docket No. 99-0115, without also permitting parties' access to the discovery and cross-examination evidence regarding that evidence, unequally burdens intervening parties with duplicative evidentiary and discovery tasks. This allows ComEd, which initiated this proposal on its own timetable, to force the intervening parties to unnecessarily expend much of the finite time available in this docket's shortened schedule on an issue that has already been addressed in ICC Docket 99-0115, thereby limiting the time available to adequately address the other issues.

WHEREFORE, the People of the State of Illinois and the Citizens Utility Board,
respectfully request that the Commission grant consolidation of ICC Dockets 99-0115 and 00-
0191 with ICC Docket No. 00-0361.

Respectfully submitted,

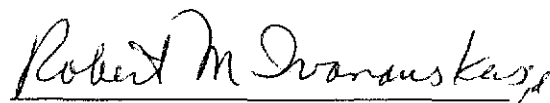
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June 8, 2000

STATE OF THE ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company)	
)	
Petition for Approval of a Revision to)	Docket No. 00-0361
Decommissioning Expense Adjustment)	
Rider to Take Effect on Transfer of)	
ComEd's Generating Stations)	

NOTICE OF FILING

PLEASE TAKE NOTICE that on this date, June 9, 2000, we have filed with the Chief Clerk of the Illinois Commerce Commission the enclosed People of The State Of Illinois And Citizens Utility Board's Response to Cook County's Motion To Dismiss And/Or Consolidate in the above-captioned docket by delivering it to United Parcel Service for next day delivery to Donna Caton, Chief Clerk of the Illinois Commerce Commission 527 East Capitol Avenue, Springfield, Illinois 62794-9280.



Mark G. Kaminski
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Mark G. Kaminski, Assistant Attorney General, hereby certify that I served above identified documents upon all active parties of record on the attached service list by United States Mail, first class postage prepaid on June 9, 2000, at 100 West Randolph Street, Chicago, Illinois 60601.



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